

## **EXHIBIT 6**

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13 Attorneys for Plaintiff Netlist Inc.

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 SOUTHERN DIVISION

17 NETLIST INC., a Delaware  
corporation,

18 Plaintiff,

19 v.

20 SAMSUNG ELECTRONICS CO.,  
LTD., a Korean corporation,

21 Defendant.

22 Case No. 8:20-cv-00993-MCS (ADS)

23 **NETLIST INC.'S RESPONSE TO  
INFORMATION REQUEST  
REGARDING DOCUMENT  
PRODUCTION**

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1 Pursuant to the Court's instruction, Netlist provides the following information  
2 regarding its identification of the email discussed at side-bar memorializing the  
3 substance of a phone conversation between two Netlist employees (Raymond Jiang  
4 and Devon Park) and Neal Knuth at Samsung. The email is attached as Exhibit A.

5 Netlist first identified this document after Samsung filed an amended exhibit  
6 list on March 21, 2024 containing over a hundred new exhibits. Several of the new  
7 Samsung exhibits, including exhibit 1400, were documents produced by Netlist  
8 during discovery regarding the name of an end customer for a product that Netlist  
9 planned to sell to an intermediary. Counsel for Netlist asked Mr. Park if he had a  
10 memory of these emails, and he recalled a phone conversation with Mr. Knuth around  
11 this time. After searching his Netlist email account, he discovered the call notes.

12 Netlist's current counsel was not involved in discovery, but based on its  
13 investigation (including discussion with prior counsel last evening) believes that the  
14 original search was diligent, and that the document was not identified by the diligent  
15 search.

16 First, Netlist used an outside vendor to perform a broad initial document pull  
17 from Netlist, and Netlist's current counsel has confirmed that this email was not  
18 within the documents provided to prior counsel by the outside vendor. Notably, the  
19 document does not contain any reference to Samsung or the JDLA (or any  
20 abbreviation thereof) which is why it was not identified.

21 Second, Mr. Park was not deposed during fact discovery, and therefore  
22 previous counsel had no reason to be aware of the single line in the notes.

23 Third, the document was not responsive to any discovery request to which  
24 Netlist agreed to respond. Samsung served a single set of RFPs. Only one could  
25 potentially have covered the document at issue. Samsung's RFP No. 3 sought "All  
26 DOCUMENTS AND COMMUNICATIONS RELATING TO purchase orders sent  
27 by YOU to SAMSUNG." Exhibit B at 6. Netlist, however, objected to this request as  
28 overly broad, and agreed to a more limited scope, specifically: "non-privileged

1 purchase orders and related communications sent by Netlist to Samsung.” *Id.* at 7  
2 (emphasis added). As the document at issue was not sent by Netlist to Samsung, it  
3 would not have been captured in the search which would have looked for Samsung  
4 email addresses. Samsung did not object or move for relief on the grounds that this  
5 response was too narrow or in any way improper.

6 Fourth, the email had very tangential, if any, relevance to the issues in the case.  
7 The JDLA does not require Netlist to identify the name of its customers (much less  
8 the ultimate end customer to whom its customer sells), and Samsung never made any  
9 argument, asked any deposition questions, or served any discovery on that issue. The  
10 first time Samsung gave any indication that it would attempt to inject this issue into  
11 the case was the amended exhibit list served on March 21, 2024.<sup>1</sup> During pre-trial  
12 preparations, Netlist’s counsel asked Mr. Park to investigate it, and he identified the  
13 internal email based on his personal memory. Notably, Mr. Park was no longer  
14 employed at Netlist during the discovery period in this case. He was re-hired by  
15 Netlist in 2022.

16 In sum, Netlist believes that its original search was diligent. Notably, Netlist  
17 produced all of the documents that Samsung claimed showed that Netlist’s employees  
18 were not forthcoming about their end customer, which include external emails as well  
19 as internal emails that refer to Samsung or abbreviations for Samsung.

20 In light of the Court’s ruling that the document is not in evidence, Netlist will  
21 not make reference to this document in its closing argument, or on cross examination  
22 of Samsung’s witnesses.

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26 <sup>1</sup> At trial, opposing counsel tried to used Ex 1004 to impugn Mr. Park’s  
27 credibility, not to prove any fact that is material to claim at issue. Netlist thus sought  
28 to introduce this document as a prior consistent statement under the Federal Rules of  
Evidence. FRE 801(d)(1)(B) (a statement is not hearsay if it “is consistent with the  
declarant’s testimony and is offered: (i) to rebut an express or implied charge that the  
declarant recently fabricated it or acted from a recent improper influence or motive in  
so testifying; or (ii) to rehabilitate the declarant’s credibility as a witness when  
attacked on another ground.”).

1 Dated: May 15, 2024

Respectfully submitted,

2 IRELL & MANELLA LLP  
3 A. Matthew Ashley

4 By: /s/ A. Matthew Ashley  
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